

Assembly Bill No. 2400

CHAPTER 321

An act to amend Sections 922.2, 922.5, 922.6, and 1781.10 of, and to add Section 1781.14, to the Insurance Code, relating to reinsurance.

[Approved by Governor September 18, 2006. Filed with
Secretary of State September 18, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2400, Benoit. Reinsurance.

Existing law provides that the Insurance Commissioner regulates the business of reinsurance.

This bill would make minor changes in the law regarding credit for reinsurance, insolvency of a ceding company, assets or deductions for reinsurance, and foreign ceding insurers.

This bill would also provide that during an examination of a reinsurance intermediary, all documents disclosed may be used by the commissioner, and given confidential treatment, as specified. This bill would further provide that the examination shall be at the expense of the insurance intermediary, and that the commissioner may revoke the license of the insurance intermediary for a refusal to promptly pay the examination expense when due. This bill would also provide the manner in which insurance intermediaries must comply with court or arbitration panel orders regarding production of documents or witnesses, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 922.2 of the Insurance Code is amended to read:

922.2. (a) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability in accordance with Sections 922.4 and 922.5 only if the reinsurance contract contains provisions that provide, in substance, as follows:

(1) The reinsurer shall indemnify the ceding insurer for the risk it has assumed according to the terms and conditions contained in the reinsurance contract.

(2) In the event of insolvency and the appointment of a conservator, liquidator, or statutory successor of the ceding company, the reinsurance shall be payable to the conservator, liquidator, or statutory successor on the basis of claims allowed against the insolvent company by any court of competent jurisdiction or by any conservator, liquidator, or statutory successor of the company having authority to allow such claims, without diminution because of that insolvency, or because the conservator,

liquidator, or statutory successor has failed to pay all or a portion of any claims. Payments by the reinsurer as set forth in this subdivision shall be made directly to the ceding insurer or to its conservator, liquidator, or statutory successor, except where the contract of insurance or reinsurance specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer.

The reinsurance contract may provide that the conservator, liquidator, or statutory successor of a ceding insurer shall give written notice of the pendency of a claim against the ceding insurer indicating the policy or bond reinsured, within a reasonable time after such claim is filed and the reinsurer may interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding insurer or its conservator, liquidator, or statutory successor. The expense thus incurred by the reinsurer shall be payable subject to court approval out of the estate of the insolvent ceding insurer as part of the expense of conservation or liquidation to the extent of a proportionate share of the benefit which may accrue to the ceding insurer in conservation or liquidation, solely as a result of the defense undertaken by the reinsurer.

(b) Payment pursuant to a reinsurance contract shall be made within a reasonable time with reasonable provision for verification in accordance with the terms of the reinsurance agreement. However, in no event shall the payments be beyond the period required by the National Association of Insurance Commissioners (NAIC) Accounting Practices and Procedures Manual.

(c) The original insured or policyholder shall not have any rights against the reinsurer which are not specifically set forth in the contract of reinsurance, or in a specific agreement between the reinsurer and the original insured or policyholder.

SEC. 2. Section 922.5 of the Insurance Code is amended to read:

922.5. (a) An asset or a deduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 922.4 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer to the extent of either of the following:

(1) The asset or deduction is not greater than the amount of funds held by the ceding insurer under a reinsurance contract with that assuming insurer as security for the payment of obligations thereunder and such funds are held in the United States under the exclusive control of the ceding insurer.

(2) The asset or deduction is not greater than the amount of funds held in a trust, satisfactory to the commissioner, on behalf of the ceding insurer under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder and is held in a qualified United States financial institution, as defined in subdivision (b) of Section 922.7, subject to withdrawal solely by the ceding insurer.

The security under this subdivision may be in the form of cash or securities authorized as general investments under Article 3 (commencing

with Section 1170) of Chapter 2, or securities listed by the Securities Valuation Office of the NAIC, qualifying as admitted assets under this code and with liquidity meeting the requirements of Section 706.5.

(b) An asset or a deduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 922.4 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer to the extent that security is provided in the form of letters of credit, satisfactory to the commissioner, which shall be:

(1) Clean, irrevocable, unconditional letters of credit, issued or confirmed by qualified United States financial institutions, as defined in subdivision (a) of Section 922.7, effective no later than December 31st in respect of the year for which filing is being made, and in the possession of the ceding insurer on or before the filing date of its annual statement.

(2) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation and shall, notwithstanding the issuing or confirming institutions' subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

SEC. 3. Section 922.6 of the Insurance Code is amended to read:

922.6. (a) Unless credit for reinsurance or deduction from liability is disallowed pursuant to Section 922.3 or 923, credit for reinsurance or deduction from liability shall be allowed a foreign ceding insurer to the extent credit has been allowed by the ceding insurer's state of domicile if either:

(1) The state of domicile is accredited by the NAIC.

(2) Credit or deduction from liability would be allowed under this statute if the foreign ceding insurer were domiciled in this state.

(b) Notwithstanding subdivision (a), credit for reinsurance or deduction from liability may be disallowed upon a finding by the commissioner that either the financial condition of the reinsurer, or the collateral or other security provided by the reinsurer, does not, in substance, satisfy the credit for reinsurance requirements applicable to ceding insurers domiciled in this state.

SEC. 4. Section 1781.10 of the Insurance Code is amended to read:

1781.10. (a) A reinsurance intermediary shall be subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of each reinsurance intermediary in a form usable to the commissioner.

(b) A reinsurance intermediary-manager may be examined as if it were the reinsurer.

(c) All documents and information disclosed in connection with the examination of a reinsurance intermediary may be used by the commissioner and shall be given confidential treatment by the commissioner to the same extent as provided in Section 735.5 for documents and information disclosed in connection with the examination of an insurer.

(d) An examination shall be at the expense of the reinsurance intermediary. The commissioner may revoke the license of the reinsurance intermediary for a refusal to promptly pay the examination expense when due.

SEC. 5. Section 1781.14 is added to the Insurance Code, to read:

1781.14. (a) A reinsurance intermediary shall comply with any order of a court of competent jurisdiction or a duly constituted arbitration panel requiring the production of nonprivileged documents by the reinsurance intermediary, or the testimony of an employee or other individual otherwise under control of the reinsurance intermediary with respect to any reinsurance transaction for which it acted as a reinsurance intermediary.

(b) Compliance with subdivision (a) shall be subject to the right of the reinsurance intermediary and the parties to the transaction to object to the court or arbitration panel concerning the nature or scope of the documents or testimony or the time within which it must comply with the order. Failure to comply with the order shall be deemed to be a material noncompliance with this chapter.